

E-FILED on 7/12/07IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISIONTRACY WATSON, RENEE STALKER,
OLIVIA S., SHAFER W., RILEY W.,

Plaintiffs,

v.

COUNTY OF SANTA CLARA, COUNTY OF
SANTA CLARA DEPARTMENT OF
FAMILY AND CHILDREN SERVICES,
COUNTY OF SANTA CLARA
DEPARTMENT OF COUNTY COUNSEL,
COUNTY OF SANTA CLARA DISTRICT
ATTORNEYS OFFICE, SANTA CLARA
VALLEY MEDICAL CENTER,
EVERGREEN SCHOOL DISTRICT, CITY
OF SAN JOSE, SAN JOSE POLICE
DEPARTMENT, NORMA SPARKS,
YAZMINA LETONA, SHARON BURGAN,
JEWELS RAMIREZ, VU TRAN, ANN
MILLER RAVEL, RIMA SINGH, AARON
WEST, GEORGE KENNEDY, CLIFTON
BLACK, ROSE REAL, ROBERT PRUITT,
CHERYL HARMS, CLAUDIA BLODGETT,
GARY KISHIMOTO, JOELLA MOLLOY,
JOHN HAMILTON, ANITA NOBLE, JANET
KAHLE, MARY RITTER, DAVID KEARNS,
RAJUL KAZI, ROB DAVIS, WILLIAM
HOYT, CRAIG BLANK,

Defendants.

No. C-06-04029 RMW

ORDER DENYING VALLEY MEDICAL
CENTER DEFENDANTS' MOTION FOR
JUDGMENT ON THE PLEADINGS

[Re Docket No. 66]

Defendants John Hamilton, Anita Noble, Janet Kahle, Mary Ritter, David Kearns, and Rajul Kazi (collectively "VMC defendants") move for judgment on the pleadings. Plaintiffs oppose the motion on the merits and on the grounds that it is premature. The court has read the moving and

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LJP

1 responding papers and considered the arguments of counsel. For the reasons stated below, the court
2 DENIES the VMC defendants' motion for judgment on the pleadings without prejudice to it being
3 renoticed on the submitted papers after all defendants have answered or been dismissed.

4 Plaintiffs argue that, as a threshold matter, the VMC defendants' motion is premature because
5 not all defendants have answered the Second Amended Complaint. Rule 12(c) provides that a party
6 may move for judgment on the pleadings "[a]fter the pleadings are closed but within such time as
7 not to delay the trial." Fed. R. Civ. P. 12(c). When the pleadings are "closed" is determined by
8 reference to Rule 7(a), which specifies what pleadings are required under the Federal Rules. *See*
9 James Wm. Moore et al., *Moore's Manual--Federal Practice and Procedure* § 16.02. "Thus, unless
10 the court orders a reply, the pleadings close after the last of the following pleadings in the case has
11 been filed: the answer, a reply to a counterclaim, an answer to a cross-claim, or a third-party
12 answer." *Id.*

13 Courts confronting the issue have generally accepted the proposition that, where an action
14 names multiple defendants, the pleadings are not closed until all defendants have answered. *See*,
15 *e.g.*, *Habeeba's Dance of the Arts, Ltd. v. Knoblauch*, 2006 WL 968642 at *2 (S.D. Ohio 2006)
16 (denying defendant's motion for judgment on the pleadings where the other defendant had filed a
17 motion to dismiss that was pending before the court); *Grassmueck v. Barnett*, 2003 WL 22128337 at
18 *3 (W.D. Wash. 2003) (same); *Stands Over Bull v. Bureau of Indian Affairs*, 442 F. Supp. 360, 367
19 (D. Mont. 1977) (denying defendants' motion because they had not filed an answer although other
20 defendants had); *see also* William W. Schwarzer, A. Wallace Tashima & James M. Wagstaffe,
21 *California Practice Guide: Federal Civil Procedure Before Trial* § 9:324 (2007). However, some
22 courts, while citing the general rule, have found that they have discretion to allow motions for
23 judgment on the pleadings in specific situations, even where not all defendants have filed an answer.
24 *See Johnson v. Dodson Pub. Sch.*, 463 F. Supp. 2d 1151, 1156 (D. Mont. 2006) (finding defendant's
25 motion "technically was premature" but allowing it because it concerned a cause of action that
26 named only that defendant and plaintiffs had not raised a timeliness objection); *Noel v. Hall*, 2005
27 WL 2007876 at *1-2 (D. Or. 2005) (allowing defendant's motion where two other defendants had
28 not answered the complaint for five years and the motion only sought to resolve a legal issue without

1 dismissing any claims); *Moran v. Peralta Cnty. Coll. Dist.*, 825 F. Supp. 891, 894 (N.D. Cal. 1993)
2 (allowing defendant's motion where another defendant had yet to be served and thus technically was
3 not yet a party).

4 The specific facts in *Johnson*, *Noel*, and *Moran* are unlike the present situation. Plaintiffs
5 have raised a timeliness objection and further argue that the motion deals with issues that affect
6 causes of action asserted against other defendants. In addition, all defendants have been served, and
7 there is currently no risk that the other defendants will not answer the complaint in a timely manner
8 once their motion to dismiss is resolved. Although the VMC defendants distinguish *Stands Over*
9 *Bull*, they cite no case law in support of the position that their motion should be allowed at the
10 current stage of proceedings. Thus, the court finds that the VMC defendants' motion is premature
11 because the pleadings are not closed.

12 **ORDER**

13 For the foregoing reasons, the court DENIES the VMC defendants' motion for judgment on
14 the pleadings without prejudice to it being renoted on the submitted papers after all defendants
15 have answered or been dismissed.

16
17 DATED: 7/10/07


RONALD M. WHYTE
United States District Judge

1 **Notice of this document has been electronically sent to:**

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11 Counsel are responsible for distributing copies of this document to co-counsel that have not
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13 **Dated:** 7/12/07

SPT
14 Chambers of Judge Whyte

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